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9 UNITED STATES DISTRICT COURT
10 DISTRICT OF NEVADA
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12 UNITED STATES OF AMERICA,) 2:14-cr-00335-HDM-CWH
13 Plaintiff,)
14 vs.) ORDER
15 CHRISTOPHER WALKER,)
16 Defendant.)
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18 The court has considered the report and recommendation of the
19 United States Magistrate Judge (ECF No. 168) filed on September 21,
20 2016, in which the magistrate judge recommends that this court deny
21 defendant's second and third motions to suppress (ECF No. 95 and
22 ECF No. 137).¹ No objections to the report and recommendation have
23 been filed, and the time for doing so has expired.

24 Defendant's second and third motions to suppress primarily
25 raise arguments that were considered and rejected by the court in

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27 ¹ Although the report and recommendation identifies only the
28 defendant's third motion to suppress - ECF No. 137 - two motions to
suppress, both raising substantially the same arguments, are pending. The
reasoning of the report and recommendation applies with equal force to both
motions to suppress.

1 deciding the defendant's first motion to suppress. (See ECF No. 43
2 and ECF No. 67). The defendant provides no basis for
3 reconsideration of those decisions. Therefore, as to those claims
4 in the second and third motions to suppress that repeat claims made
5 in the first motion to suppress, the second and third motions to
6 suppress are **DENIED**.

7 The sole issue raised in the motions that had not been
8 previously addressed by the court was the lawfulness of the search
9 of two backpacks in the possession of defendant's companion, Mitzi
10 Berry. Inside one of the bags drugs and drug paraphernalia
11 belonging to defendant were found. The discovery of the drugs and
12 drug paraphernalia led to defendant's arrest, which led to the
13 discovery that defendant was an ex-felon unlawfully in possession
14 of a firearm. The government has asserted that Ms. Berry consented
15 to the search. Defendant argues that any consent was invalid
16 because Ms. Berry was being detained by the officers and that even
17 if she did consent she lacked actual or apparent authority to do
18 so. Defendant asserts that the backpack in which the drugs were
19 found belonged to him and that Officer Gilbert, who conducted the
20 search, was or should have been on notice of facts suggesting the
21 backpack where the drugs were found was not Ms. Berry's.

22 The magistrate judge reopened the evidentiary hearing in order
23 to address this limited issue. The magistrate judge now recommends
24 that the court deny defendant's motions to suppress, in part
25 because no evidence was presented that the backpack in which the
26 drugs were found in fact belonged to the defendant or that
27 defendant had a reasonable expectation of privacy in the backpack.
28 Therefore, defendant has not established standing to object to the

1 search.

2 The court has considered the pleadings and memoranda of the
3 parties and other relevant matters of record and has made a review
4 and determination in accordance with the requirements of 28 U.S.C.
5 § 636 and applicable case law, and good cause appearing, the court
6 hereby

7 **ADOPTS AND ACCEPTS** the report and recommendation of the United
8 States Magistrate Judge (ECF No. 168) that the remainder of
9 defendant's motions be denied.

10 First, for the reasons set forth by the magistrate judge, the
11 defendant has not established standing to object to the search.

12 Second, even assuming defendant has standing, the government
13 has established that Ms. Berry had apparent authority to consent to
14 search.

15 Under the apparent authority doctrine, a search is valid
16 if the government proves that the officers who conducted
17 it reasonably believed that the person from whom they
18 obtained consent had the actual authority to grant that
19 consent. Apparent authority is measured by an objective
20 standard of reasonableness, and requires an examination
21 of the actual consent as well as the surrounding
22 circumstances. Thus, in assessing whether an officer's
23 belief was objectively reasonable, the court considers
24 the facts available to the officer at the moment.

25 *United States v. Arreguin*, 735 F.3d 1168, 1175 (9th Cir. 2013)
26 (internal quotation marks and citations omitted). Officer Gilbert
27 testified that Ms. Berry claimed ownership of the backpacks, that
28 she did nothing to make him believe the bags were not hers, and
that nothing in the bags was inconsistent with her claim of
ownership. No evidence on the record suggests that Officer Gilbert
was aware of, or should have been aware of, facts suggesting the
backpacks were not Ms. Berry's. Accordingly, the court concludes

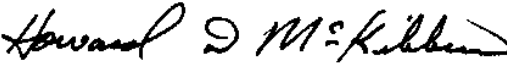
1 that Officer Gilbert had a reasonable belief that Ms. Berry had
2 authority to consent to search the bags.²

3 Finally, a criminal defendant cannot suppress his identity
4 even if there has been some illegality on the part of the
5 government. *Immigration & Naturalization Serv. v. Lopez-Mendoza*,
6 468 U.S. 1032, 1039-40 (1984); *United States v. Ortiz-Hernandez*,
7 427 F.3d 567, 577 (9th Cir. 2004).

8 Accordingly, the court hereby **ADOPTS AND ACCEPTS** the report
9 and recommendation of the United States Magistrate Judge (ECF No.
10 168), and defendant's motions to suppress (ECF No. 95 & No. 137)
11 are hereby **DENIED**.

12 **IT IS SO ORDERED.**

13 DATED: This 3rd day of November, 2016.

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15 UNITED STATES DISTRICT JUDGE
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27 ² Although impeachment evidence as to Officer Gilbert was presented
28 during the evidentiary hearing, the magistrate judge at no time made a
finding that Officer Gilbert was not a credible witness.